Supreme Court, U.S.
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No. 95-1673

In The

# Supreme Court of the United States

October Term, 1995

LYLE D. SPENCER,

*Petitioner,*

v.

HAROLD LEE SPENCER, et al.,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit**

## OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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April 22, 1996

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## QUESTIONS PRESENTED

1. Because there were pending motions to dismiss, the district court did not abuse its discretion in ordering that discovery be stayed, thus there is no merit to Lyle Spencer's first and fifth questions concerning discovery rulings.

2. Because the complaints against the state court judge concerned actions within the scope of judicial duties, the state court judge was absolutely immune from suit and there is no basis for the second question.

3. Because plaintiff, Lyle Spencer, neither complied with the requirements of Fed. R. Civ. P. 4(c)(2)(C)(ii), nor attempted any other service upon First American State Bank and because First American State Bank had moved to dismiss prior to Spencer moving for default, there is no basis for Lyle Spencer's third and fourth questions regarding default, issues which were never reached by the district court.

## RULE 29.1 STATEMENT

First American State Bank, located in Fort Dodge, Iowa is an Iowa Banking Corporation with its principal place of business in Fort Dodge, Iowa, and an office in Dayton, Iowa. Its corporate name has been changed to First American Bank. First American Bank does not have any subsidiaries. First American Bank is a wholly owned subsidiary of First American Bank Group, Ltd., an Iowa bank holding company. First American Bank Group, Ltd. has the following other subsidiaries: First American Bank located in Webster City, Iowa; First American Bank located in Ames, Iowa and with offices in Roland, Jewell and Ellsworth, Iowa and First American Credit Corporation located in Fort Dodge, Iowa.

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## INTRODUCTION

Lyle Spencer's numerous complaints[1] about his relationship with his brother, Harold Spencer, and about actions taken by First American State Bank, trustee of the trust established under his father's will, do not state a claim under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq*. Specifically, the complaint failed to identify any "enterprise" that has some ascertainable structure distinct from that inherent in a pattern of racketeering. Further, the acts alleged in the complaint were not "racketeering activity" within the intent and scope of the RICO Act. Dismissal of the complaint was proper.

As motions to dismiss were pending, the magistrate's order staying discovery pending ruling on the motions to dismiss was proper. For purposes of the motions, all of the allegations of the complaint were assumed to be true, thus there was no need to "prove" the allegations through discovery.

First American State Bank had never been served. It joined in the motions to dismiss prior to any request for default. There was no factual or legal basis for default. The trial court did not even reach the issue as the complaint was so patently deficient.

The trial court correctly dismissed Lyle Spencer's RICO complaint. The Eighth Circuit affirmed without opinion. Certiorari should be denied as the case presents neither error nor grounds for review.

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[1] First American State Bank does not admit that there is any factual basis for the claims made in Lyle Spencer's complaint.

## STATEMENT

Lyle D. Spencer, acting *pro se*, filed his complaint against his brother, Harold Lee Spencer, and Harold's attorney, Scott Hillstrom. Also sued was First American State Bank (hereinafter the "trustee"), the trustee of the trust established under the will of Lyle's and Harold's father. The principal asset of the trust was the father's farmland. Lyle also sued the Honorable Ronald Schechtman, Chief Judge of the Second Judicial District of Iowa, who had presided over a trial in which Harold had recovered judgment against Lyle for libel[2] and various proceedings involving the trust. Lyle attempted, but failed to allege claims for recovery under the provisions of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*

The specific allegations against the trustee are contained in Paragraphs 12-14 and 36-38 of the complaint. Lyle Spencer's complaint concerns matters between the years 1985 and 1988. He alleged, in Paragraph 12, that the trustee sought to harass and intimidate Lyle in order to wrongfully obtain concessions from him in order to ruin him and force him from the land. He alleged, in Paragraph 13, that his lease was terminated by the trustee; and in Paragraph 14, that after five or six months of uncertainty he was allowed to stay on the land and new leases were issued in December of 1988. In Paragraph 36, he alleged that the trust officer demanded that Lyle either pay rent on farm improvements which he had built out of

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[2] See *Spencer v. Spencer*, 479 N.W.2d 293 (Iowa 1991).

his own savings or that the farm lease would be terminated and that the lease was, in fact, terminated in violation of a court order. He claimed that this constituted an act of extortion. In Paragraph 37, Lyle claimed that the trustee attempted to obtain money under false pretenses by charging nearly $4,000 to the trust for farm management services. In Paragraph 38, he alleged that the trust's attorneys informed him that cash rent would be waived if a farm manager could be employed. The farm manager would cost the trust $13,500 a year. Attached to the petition were certain exhibits, including a notice of termination of farm tenancy to Lyle and Kathy Spencer issued in 1988 and a fee request for trust services submitted in March of 1989. None of these allegations are admitted by the trustee.

Summons were issued on June 14, 1993. Actual service was never attempted. Lyle attempted to obtain service over the trustee by mailing under Rule 4(c)(2)(C)(ii), Fed. R. Civ. P. He did not follow the rule as (1) he did not include in the mailing the required two copies of the notice, (2) he did not include any acknowledgments in his mailing to the trustee, nor (3) did he enclose any return envelope.

Harold Spencer filed a motion to dismiss challenging the sufficiency of Lyle's allegations to state a claim for a violation of RICO and claiming that the suit was barred by the statute of limitations. Even though no service had been perfected, the trustee, on July 19, 1993, filed its joinder in the motion to dismiss. Lyle moved for default against the trustee on July 23, 1993. The trustee resisted the motion on the grounds that the attempted service was

ineffective and had not conferred jurisdiction over the trustee.

Lyle sent discovery requests to the Defendants. All Defendants moved for protective orders requesting that discovery be stayed until after a ruling was entered upon the motions to dismiss. Magistrate Jarvey granted this relief on November 22, 1993.

The motions to dismiss for failure to state a claim for relief were submitted to Senior Judge Donald E. O'Brien on February 3, 1994. In addition to the oral and written argument, the court went to extraordinary lengths to accommodate Lyle Spencer's attempt to state a claim, including allowing him to file additional documents and exhibits in support of his claims and to call as many witnesses as he might choose to offer testimony in support of his claims.

Judge O'Brien reviewed Lyle's complaints over the handling of the court-supervised trust, the events that led to the libel judgment against Lyle, and his brother's efforts to collect the judgment. The district court concluded that Lyle had not plead the existence of an "enterprise" sufficient to make a claim under the RICO statute. No factual basis for the existence of an enterprise, separate and apart from the pattern of racketeering activity was alleged. The complaint failed to identify any "enterprise" that has some ascertainable structure distinct from that inherent in a pattern of racketeering. Further, the district court concluded that the alleged acts were not "racketeering activity" within the intent and scope of the RICO Act. The court did not reach the issue of whether

the claims were barred by the statute of limitations contained in the act. As no claim had been stated against any of the Defendants, the court ruled that the motion for default and the objections to the protective order were moot. As to Judge Schechtman, judicial immunity also applied.[3]

Judge O'Brien ruled, in part –

> "The court has reviewed plaintiff's papers at great length and has considered the arguments of the parties. The court is persuaded that as a matter of law, plaintiff's allegations, even when taken as true, are insufficient to maintain a RICO claim against these defendants. The plaintiff has not properly alleged an 'enterprise' for the purposes of RICO and further, the acts allegedly taken by the defendants do not constitute 'racketeering activity' as that term is defined in the RICO statutes."

Petition. App. D, p. 15.

Lyle moved the district court to reconsider the dismissal and offered whatever additional information and documents which he believed supported his claims. He also filed motions to amend, for costs, for contempt of court, and to strike a document. After another lengthy hearing, the trial court issued its order of November 23, 1994 denying Lyle's motions. None of Lyle's filings presented any reason for the district court to change the

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[3] For the purpose of the motion to dismiss and this appeal, Lyle Spencer's allegations, no matter how groundless, are to be treated as though they are factual. The trustee, First American State Bank, specifically denies that there is any factual basis for any of the claims of wrongdoing asserted against it.

order for dismissal. All of his "new evidence" had been considered in the prior order. Pet. App. C, pp. 5-6.

Lyle Spencer appealed. The Eighth Circuit affirmed without opinion. Lyle Spencer's Motion for Rehearing was also denied.

## REASONS FOR DENYING THE WRIT

**1. Because there were pending motions to dismiss, the district court did not abuse its discretion in ordering that discovery be stayed, thus there is no merit to Lyle's first and fifth questions concerning discovery rulings.**

**A. When motions to dismiss were pending, the trial court had discretion to stay discovery on the merits of the claims until a ruling was made upon the motions to dismiss.**

Lyle Spencer had filed rambling interrogatories and request for production of documents which were intended to harass the defendants. For an example see SA1-SA3.[4] As all of the Defendants had moved to dismiss the complaint for failure to state a claim for relief, all of the allegations were assumed, for the purpose of the motions, to be true and correct. Thus, there was no need for Lyle Spencer to use discovery to "prove" his allegations.

Each of the Defendants sought protective orders from responding to the discovery until after a ruling on the

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[4] Citations to the Appendix to the petition will be styled "Petition. App. ___." Citations to the attached Supplemental Appendix will be styled "SA___."

motions to dismiss. The magistrate correctly sustained the motions for protective orders and ordered that no discovery shall be had until after rulings have been entered on defendants' motions to dismiss. SA4-SA6. The magistrate had discretion to make this order under Rule 26(c), Fed. R. Civ. P. The ruling was correct and did not prejudice Lyle Spencer's ability to respond to the motion to dismiss.

### B. The complaint did not identify an "enterprise" that had some ascertainable structure distinct from the "pattern or racketeering" under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*

The only common thread connecting the Defendants was their interest in the trust established under the will of Lyle and Harold Spencer's father. Lyle and Harold, along with other members of their family, were beneficiaries of the trust. Hillstrom was Harold's lawyer. First American State Bank had succeeded Harold as trustee. The brothers were usually at odds over the trust management. Often their disputes could only be resolved through recourse to the courts, either through the state probate court's supervision of the trust or otherwise. Judge Schechtman had ruled on matters relating to the trust. When the ill-will between the brothers boiled over into the libel suit, Judge Schechtman presided over the trial.

Lyle's loss of that suit, the judgment against him, and Harold's unrelenting collection efforts (undertaken by his attorney, Hillstrom) only worsened Lyle's sense of victimization. He blamed everyone else for his difficulties. Hence, Lyle commenced this RICO suit which sought to

revisit the same disputes that had been decided against him in state court. The allegations of Lyle's complaint, the exhibits attached to the complaint, Lyle's pleadings, his evidence and testimony at the various hearings all document Lyle's belief that these Defendants were conspiring against him. Lyle may genuinely believe that he has suffered the slings and arrows of outrageous fortune. His personal tragedy may be the stuff of theater; it does not present a claim for relief under RICO.

The trustee's unfortunate tie to Lyle's frustration over his father's trust does not constitute an "enterprise" under RICO. Congress enacted the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* to prevent organized crime from infiltrating businesses and other legitimate economic entities. *United States v. Turkette*, 452 U.S. 576, 101 S.Ct. 2524, 2532, 69 L.Ed.2d 264 (1981). It was not directed to mere criminal conduct, not even to joint criminal conduct, but to "organized" crime.

The district court correctly dismissed Lyle's complaint as he failed to allege the existence of an enterprise under RICO as stated in *Stephens, Inc. v. Geldermann, Inc.*, 962 F.2d 808, 815 (8th Cir. 1992):

> "The essential characteristics of an Enterprise under RICO include: '(1) a common or shared purpose; (2) some continuity of structure and personnel; and (3) an ascertainable structure distinct from that inherent in a pattern of racketeering.' *Atlas Pile Driving Co. v. DiCon Fin. Co.*, 886 F.2d 986, 995 (8th Cir. 1989) (citing *United States v. Kragness*, 830 F.2d 842, 855 (8th Cir. 1987)). In particular, 'an enterprise cannot simply be the undertaking of the acts of racketeering, neither can it be the minimal association

> which surrounds these acts.' *United States v. Bledsoe*, 674 F.2d 647, 664 (8th Cir.), *cert. denied*, 459 U.S. 1040, 103 S.Ct. 456, 74 L.Ed.2d 608 (1982)."

*Stephens* held that the group of defendants –

> " . . . had no structure independent of the alleged racketeering activity. The only common factor that linked all these parties together and defined them as a distinct group was their direct or indirect participation in Markle's scheme to defraud Stephens. Although it is true that each member of this group carried on other legitimate activities, these activities were not in furtherance of the common or shared purpose of the enterprise and, thus, were not acts of the enterprise. Stephens, consequently, failed to prove the existence of an enterprise that extended beyond the minimal association surrounding the pattern of racketeering activity."

*Id.*, pp. 815-16.

The trial court correctly came to the same conclusion in this case. Lyle's accusations, even when accepted as factual, did not indicate the existence of an enterprise that extended beyond the minimal association created by Defendant's mutual involvement in the administration of the trust. Even if there were wrongdoing, no claim under RICO was presented either under the complaint or Lyle's claims as amplified by his exhibits, documents, testimony, pleadings and arguments.

The dismissal of Lyle Spencer's RICO complaint was required. The dismissal was affirmed. There is no basis for a grant of *certiorari*.

### C. The complaint did not allege acts of "racketeering activity" within the intent and scope of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*

The acts alleged in Lyle Spencer's complaint all relate to instances where he has not had his own way in matters relating to the trust established under his father's will. Lyle appears to see anyone who disagrees with him as not only wrong, but criminal. Lyle sees conspiracies all around him. Lyle accuses the Defendants and their associates of "interstate drug trafficking" and "a host of crimes with bribery, extortion, and dealing in dangerous drugs."

Despite all his invective, Lyle has been unable to allege facts demonstrating a pattern of racketeering activity as listed in the RICO Act, 18 U.S.C. § 1961(1). The district court thoroughly reviewed Lyle's claims and correctly concluded that none fit the definition of "racketeering activity" as required by the above statute.

To prove a pattern of racketeering activity Lyle Spencer "must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." *H. J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 2900, 106 L.Ed.2d 195 (1989); *see also Pavlik v. Cargill, Inc.*, 9 F.3d 710 (8th Cir. 1993).

The circuit had observed in *Thornton v. First State Bank of Joplin*, 4 F.3d 650, 652 (8th Cir. 1993):

> "RICO defines a 'pattern of racketeering activity' as at least two acts of racketeering activity, 'one of which occurred after [RICO was enacted]

> and the last of which occurred within 10 years . . . after the commission of a prior act of racketeering activity.' 18 U.S.C. s 1961(5). The United States Supreme Court has further provided: RICO's legislative history reveals Congress' intent that to prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity. *H. J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 2900, 106 L.Ed.2d 195 (1989)."

The district court gave Lyle Spencer every opportunity to state a claim. Dismissal of Lyle Spencer's complaint was required. There is no basis for grant of *certiorari*.

**2. Because the complaints against the state court judge concerned actions within the scope of judicial duties, the state court judge was absolutely immune from suit and there is no basis for the second question.**

Lyle Spencer claimed that Judge Schechtman, who presided over the libel suit, had fraternized with Iowa Supreme Court Justice Harris, a witness in the case and that Judge Schechtman had later threatened Spencer with sanctions and had entered illegal, *ex parte* orders. Assuming that these claims were true, the conduct fell within the scope of judicial duties. Thus, even if the judge acted maliciously and corruptly, he was absolutely immune from suit. *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213 (1967); *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099 (1978).

3. **Because Plaintiff, Lyle Spencer, neither complied with the requirements of Fed. R. Civ. P. 4(c)(2)(C)(ii), nor attempted any other service upon First American State Bank and because First American State Bank had moved to dismiss prior to Spencer moving for default, there is no basis for Lyle Spencer's third and fourth questions regarding default, issues which were never reached by the district court.**

The district court never reached the issue of whether the trustee could be in default where service had never been accomplished. As the complaint failed to make a claim upon which relief could be granted, it was not necessary for the court to rule upon Lyle Spencer's motion for default.

**A. Plaintiff failed to make effective service of process by mailing.**

Lyle Spencer attempted to serve process concerning this action on the trustee, First American State Bank, under Fed. R. Civ. P. 4(c)(2)(C)(ii). This rule allows a party to serve process on a defendant by ordinary mail if certain requirements are met. The rule provides that when the defendant to be served is a corporation, service of the summons and complaint may be accomplished:

> "by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return

> envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3)." Fed. R. Civ. P. 4(c)(2)(C)(ii).

Although Lyle Spencer sent a copy of the summons and of the complaint to the trustee, he failed to send two copies of a notice and acknowledgment that conformed substantially to form 18-A and a return envelope, postage prepaid, addressed to Plaintiff. Instead, Plaintiff included only one copy of a document similar to a proper notice and acknowledgment, without the acknowledgment portion of the document. Plaintiff also failed to include a return envelope, postage prepaid, addressed to Plaintiff.

Due to Plaintiff's failure to properly comply with the requirements for mailing of service under Rule 4(c)(2)(C)(ii), Defendant First American State Bank had no obligation to return an acknowledgment of service. In the absence of an acknowledgment, no service is obtained by mailing under this rule. In order to make effective service, Plaintiff was required to serve the summons and complaint by personal or substituted service under Rule 4(d)(1) or (3). Plaintiff failed to make such service by other means.

In *Gulley v. Mayo Foundation*, 886 F.2d 161, 165 (8th Cir. 1989), the plaintiff argued that the defendant's signing of a postal service return receipt satisfied the requirement that service be acknowledged. The court held that "the provisions of Rule 4(c)(2)(C)(ii) are to be strictly complied with and that, therefore, if the acknowledgment form is not returned, the formal requirements of mail service are not met and personal service must be obtained." *Id.* (quoting *Young v. Mount Hawley Insurance Co.*, 864 F.2d 81, 82-83 (8th Cir. 1988)).

Similarly, the Ninth Circuit has held that, under Rule 4(c)(2)(C)(ii), service is ineffective unless the defendant timely returns the acknowledgment. *Mason v. Genisco Technology Corp.*, 960 F.2d 849 (9th Cir. 1992). If the defendant fails to return the acknowledgment, the plaintiff must attempt follow-up service by some other method, in order to make the service effective, even if defendant receives actual notice by mail. *Id.*

First American's signing of the postal service return receipt cannot be considered an acknowledgment of service under *Gulley* and *Mason*. Plaintiff must obtain personal service on Defendant First American State Bank in order to make effective service of process. Plaintiff has failed to make such service. No effective service has even been made on Defendant First American State Bank.

**B. A default may not be entered against a party unless the requirements for effective service have been satisfied.**

The trustee, First American State Bank, was never effectively served. The defects in the attempted service

were identified in the preceding argument. Absent service, there is no jurisdiction and can be no default. Only if there is service can the two-step process leading to a default judgment commence. The first step is the entry of default. Fed. R. Civ. P. 55(a). The second step is entry of the actual judgment by default.

> When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

Fed. R. Civ. P. 55(a).

The words "plead or otherwise defend" relate to the provisions of Rule 12, which, in general, requires the defendant to present his defenses in an answer served within 20 days of the date on which he was served with process, but permits the raising of certain defenses by motion, at the option of the pleader. If a party has not been served, there is nothing by which to measure the appropriate time period for "plead[ing] or otherwise defend[ing]." James W. Moore, *Moore's Federal Practice*, ¶ 55.03[1] (2d ed. 1991).

Lyle claims the trustee was late in filing its response to his complaint. However, as the trustee was never effectively served with the complaint, it had no obligation to file any pleading. The trustee could not have been late in filing a response to the complaint.

A court does not have jurisdiction to enter judgment against a defaulting defendant unless effective process has been served on the defendant. *Harris v. Hardeman*, 14

How. 334, 55 U.S. 334, 14 L.Ed. 444 (1852). *See also, Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438 (1946); *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 (D.C. Cir. 1987) (service of process is the means by which a court asserts jurisdiction to adjudicate the rights of a party). Consequently, since Spencer failed to serve effective process on the trustee, the court did not have jurisdiction to enter a default judgment against the trustee, First American State Bank.

## CONCLUSION

The Petition for Certiorari is without merit. There was no error in the district court's determination that Lyle Spencer's complaint failed to state a claim under RICO. As all of his complaints were accepted at face value by the district court in ruling upon the motions to dismiss, there was neither abuse of discretion nor prejudice in the order which stayed discovery. The state court judge was absolutely immune from liability for his actions in the scope of his judicial duties. The trustee, First American State Bank, had not been served and was not in default. The dismissal of Lyle Spencer's complaint was proper. Certiorari should be denied.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

| | |
|---|---|
| LYLE D. SPENCER,<br>Plaintiff,<br>vs.<br>HAROLD LEE SPENCER, SCOTT HILLSTROM, FIRST AMERICAN STATE BANK, and RONALD SCHECHTMAN,<br>Defendants. | ) CIVIL NO. C 93-3039<br>)<br>) FIRST SET OF<br>) INTERROGATORIES<br>) FOR DEFENDANT<br>) FIRST AMERICAN<br>) STATE BANK<br>)<br>)<br>) |

TO: Defendant, First American State Bank of Fort Dodge Iowa, and their attorneys of record, William Gibb of the Johnson, Erb, and Gibb Law Firm, 600 Boston Center, P.O. Box 1396, Fort Dodge, IA 50501-1396.

On this 1st day of October, 1993, Federal Plaintiff Lyle D. Spencer requests, pursuant to Federal Rules of Civil Procedure, that within thirty (30) days Defendant answer the following Interrogatories.

/s/ Lyle D. Spencer, pro se
Lyle D. Spencer, Pro se

INTERROGATORY 1 – Federal Defendant First American State Bank was selected to serve as Trustee for the Spencer Trust by Defendants Harold Lee Spencer and Scott Hillstrom almost a decade ago. Through the years documents prove that First American has tried to please

or award favoritism's to Defendant Harold Spencer. Why is this so?

* * *

INTERROGATORY 13 – Because of the conspiracy linking Defendant Harold Spencer and Defendant First American in the termination of Lyle Spencer's lease, he, Plaintiff Lyle Spencer Tried to defend himself by writing letters to the Trustee, Defendant First American State Bank, telling them to stop listening to Harold Spencer because he was a trouble maker, a liar, a cheat, and worse. Copies of the letters went to all those associated with the trust in the past and present. Copies were also designated, but not sent to newspapers and public officials, not to expose Harold as he claimed, but to draw attention to corruption in the State Courts, a fact agreed with by Justice Rosemary Sackett. (ex partes & etc.) As soon as Defendant Harold Spencer relinquished his charges in the Annual Report of 1988 and Lyle Spencer and his wife were given a farm lease, Defendant Spencer and Defendant Scott Hillstrom sued the Plaintiff for $1,000,000.00. Please give reasons why Defendant First American should not be responsible for planting the seeds that caused this lawsuit?

INTERROGATORY 14 – Once in Green County District Court, Defendant Harold Spencer put his long time personal friend, Justice David Harris on the stand at which time Mr. Harris illegally used the prestige of the Supreme Court, coached by his close relative, Defendant Scott Hillstrom, to convince his mostly hometown Jury, that Harold Spencer was an angel. Harris's testimony was accompanied by testimony of lawyers, Doctors, bankers,

and wealthy businessmen. Lyle Spencer had just one main witness, Kenny Robbins, Harold Spencer's neighbor for 35 years, who told the Jury that Harold was indeed a thief and had worked for Harold when he saw him steal grain from his land lady, one Mrs. Garland. Still the Jury, mostly on the weight of Defendant Harold Spencer's prestigious witnesses, granted him $60,000 at 10 int. for his suffering of emotional distress. With all the information at hand from this Interrogatory and others, it appears that first American is guilty of the existence of an enterprise affecting interstate commerce with their constant work with Defendant Scott Hillstrom. First American was defiantly employed or associated with this enterprise. First American participated in the contact of this enterprise's affairs and it is obvious that the participation was through a pattern of racketeering activity. My question is give reasons why would not Defendant First American State Bank qualify under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. S 1961, et seq.?

INTERROGATORY 15 – Is it true that presently, Defendant First American State Bank, is entertaining the demands of Defendant Harold Lee Spencer in his $68,000 farm improvement plan for the Trust farm his son operates?

/s/ Lyle D. Spencer, pro se
Lyle D. Spencer, pro se

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C93-3039

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

| | | |
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| LYLE D. SPENCER,<br>Plaintiff,<br>vs.<br>HAROLD LEE SPENCER, SCOTT HILLSTROM, FIRST AMERICAN STATE BANK, and RONALD SCHECHTMAN,<br>Defendants. | ) | NO. C 93-3039<br>ORDER<br>(Filed Nov. 22, 1993) |

This matter comes before the court pursuant to defendant Harold Lee Spencer's October 20, 1993, motion for protective order (docket number 39) and his November 8, 1993, amended and substituted motion for protective order (docket number 47); defendant Judge Ronald Schechtman's October 27, 1993, motion for protective order (docket number 41) and his November 4, 1993, amended motion for protective order and request for immediate ruling (docket number 44); and November 1, 1993, motion for protective order (docket number 43) and his November 5, 1993, amended and substituted motion for protective order (docket number 46). Plaintiff Lyle D. Spencer has resisted all motions *pro se*. All motions are granted in part.

Plaintiff Lyle D. Spencer filed this action against his elder brother, defendant Harold Lee Spencer, Harold Spencer's sometime attorney, the corporate trustee of a

family trust involved in this litigation, and the state court judge who issued various rulings in prior proceedings between the Spencers involving the family trust and other matters. Lyle Spencer has served various discovery requests upon the defendants, including interrogatories, requests for production of documents, and requests for admissions. All defendants have moved for protective orders against these discovery requests. Judge Schechtman seeks a protective order on the grounds of absolute judicial immunity. The other defendants have moved for protective orders on the grounds that the plaintiff's suit is frivolous, and that the discovery requests are burdensome, expensive, and intended to annoy and harass the defendants.

All defendants have also moved to dismiss this action as failing to state a claim upon which relieve can be granted. Rulings on those motions are pending before the Honorable Judge Donald E. O'Brien. The court concludes that discovery should be stayed until rulings have been entered on whether this suit should be dismissed. The appropriateness of plaintiff's discovery requests may then be assessed in light of their relevancy to whatever issues, if any, remain.

Upon the foregoing,

IT IS ORDERED

That all motions for protective orders are granted to the extent that no discovery shall be had until after

rulings have been entered on defendants' motions to dismiss.

November 22, 1993.

/s/ John A. Jarvey
JOHN A. JARVEY
Chief Magistrate Judge
UNITED STATES DISTRICT COURT

Copies mailed on NOV 22 1993
to counsel of record or pro se
parties as shown on the docket
sheet.

/s/ M. Jackle
Deputy Clerk